

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>OLGA DE PAZ</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 234,745
<b>MONFORT, INC.</b>	)	
Respondent	)	
Self Insured	)	

**ORDER**

The claimant appeals from an Order entered by Administrative Law Judge Pamela J. Fuller on September 1, 1999.

**APPEARANCES**

Claimant appeared by her attorney, Brian D. Pistotnik of Wichita, Kansas. The respondent appeared by its attorney, Terry J. Malone of Dodge City, Kansas.

**ISSUES**

This claim involves injuries claimant sustained in a motor vehicle accident. Claimant sought sanctions for respondent's failure to pay medical and temporary total disability benefits. Respondent argues proceeds from a settlement claimant entered into with a third party and Personal Injury Protection (PIP) benefits claimant was receiving from an automobile insurance carrier should be offset or credited against claimant's workers compensation medical and temporary total disability benefits.<sup>1</sup> The Administrative Law Judge found that respondent is entitled to such a credit and denied claimant's Motion for Sanctions.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

The Appeals Board must first determine whether it has jurisdiction to consider the issues raised in this appeal from the Administrative Law Judge's Order.

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<sup>1</sup> See K.S.A. 44-504.

This is not an appeal from an order entered pursuant to the preliminary hearing statute.<sup>2</sup> This appeal is a result of a hearing held, prior to the final award, on the claimant's Motion for Sanctions and respondent's Notice of Subrogation Lien and Motion for Credit. Compensability of the claim is not an issue on appeal.

For the Appeals Board to have jurisdiction to review this order, at this juncture of the proceeding, the appeal would have to be brought pursuant to K.S.A. 1999 Supp. 44-551(b)(1). The amendments to K.S.A. 44-551(b)(1), effective July 1, 1997, changed the jurisdiction of the Appeals Board from reviewing "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge" to review of "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge."

As a general rule penalty orders are considered final. This is particularly true where penalties are imposed. In this case penalties were denied. The claimant's Motion for Sanctions was based upon and sought enforcement of a preliminary hearing order. Respondent alleged a defense to payment of the ordered temporary total disability and medical benefits. It claimed a credit for wage replacement and medical benefits claimant received from her automobile insurance carrier and also for a settlement claimant received from another insurance carrier. The ALJ agreed in part with respondent's position and allowed a partial credit. Claimant argues respondent is not entitled to any credit. Respondent argues it is entitled to a larger credit. Thus, a determination of the penalties issue depends upon a determination of the credit issue. That is a determination that can best be made after the record is completed and the case submitted to the ALJ for award. The current record is incomplete both as to the compensability of the claim and the applicability of K.S.A. 44-504 to the insurance proceeds claimant has received. The ALJ's order is interlocutory. It is subject to review at the time of the final award.

The Appeals Board finds the Administrative Law Judge's Order is not a final order, award, modification of an award, or a preliminary hearing award as contemplated by K.S.A. 1999 Supp. 44-551(b)(1). The Appeals Board concludes the Order is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. Therefore, the Appeals Board lacks jurisdiction to review the order until it is contained in a final order or award.

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<sup>2</sup> K.S.A. 1999 Supp. 44-534a.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the claimant's appeal from the Order entered by Administrative Law Judge Pamela J. Fuller dated September 1, 1999, should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS  
Terry J. Malone, Dodge City, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director